

Walter S. Lewis
P. O. Box 223115 Princeville, HI 96722
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Ms. Barbara Robeson, chair, and members of
Charter Review Commission

Dear Commission members:

During my testimony at the August 3, 2005 Charter Review Commission meeting I suggested that the Commission might consider a County Total Expenditure Limitation or a Tax Limitation. Your member Mr. Belles asked a thoughtful question concerning the impact that the currently pending case about the Ohana Kauai property tax Charter amendment (County of Kauai v. Baptiste et al) might have on a charter amendment that might be proposed in this area.

In the County case the Fifth Circuit Court judge held that the real property tax measure adopted by the voters in the November 2004 General Election violated the State Constitution because only County Councils may enact property tax legislation and it violated the County Charter because it was really an initiative or a referendum that was not allowed under a limitation therein. That decision has been appealed and the case is now before the State Supreme Court. It is unlikely that a decision of that court will occur before the November 2006 General Election.

If the Commission were to recommend a limitation on total County taxation, such a proposal would not comply with the State Constitution ruling in the Fifth Circuit Court decision in that it would be a law that would regulate taxation which did not originate with the County Council. Legal counsel for the Ohana group does not believe that decision is valid, but at present it represents applicable law. No violation of the County Charter should occur as it would seem impermissible to contend successfully that an amendment proposed by the Charter Commission would be an ordinance or a referendum as that would be beyond the power of the Commission.

If the Commission were to recommend a total expenditure limitation, however, there would be no obvious violation of the decision in the County case because the constitutional language involved was specifically limited to real property taxation matters. Any argument about invalidity because a total expenditure limit indirectly affected real property taxation would seem highly dubious. A claim that a total expenditure limitation was in violation of the County Charter would also seem unfounded as the Commission is without powers except as to charter amendments, and thus limitations on ordinances and referendums would be inapplicable.

For the foregoing reasons it is suggested that any measure to control county spending should be as an expenditure limitation and not a tax limitation.

Very truly yours,

Walter S. Lewis